IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

BRANDON S. KIRKPATRICK, Plaintiff,	§	
	§	
	§	
v.	§	Civil Action No. 6:16-cv-432
	§	
ROBERT A. McDONALD, Secretary,	§	
DEPT. OF VETERANS AFFAIRS,	§	
Defendant.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

I. SUMMARY

Plaintiff Kirkpatrick is a long-time housekeeping aide at the Waco VA, originally hired under Schedule A (certified by the Texas Rehabilitation Commission as having a substantial learning disability). Former first-line supervisor Jackie Hopson and then-second-line supervisor Michael Richardson discriminated against him on the basis of disability and for his prior EEO activity.

For example, Plaintiff was treated less favorably than non-disabled employees in regard to: (1) latitude in working overtime; (2) application of standards for leave; (3) improper disclosure of his confidential medical information; and (4) management's repeated solicitation of undeserved criticism of his work.

In contrast to Richardson/Hopson's portrayal of him as a problem employee, more than 10 other staff testified under oath that he: is "great," "courteous," "prompt," "responsive," "respectful," "always available," "does an excellent job," "always willing and dependable," "wonderful," "consistent," "loyal," "friendly, professional, and courteous…goes above and beyond," "excellent…does his job very well," and far outperforms his peers.

Staff testify that Hopson treats Plaintiff with hostility, falsely accusing him of leaving, harassing and singling him out, and making threats. Hopson even denies that Kirkpatrick is disabled.

II. JURISDICTION AND ADMINISTRATIVE EXHAUSTION[1]

1. This Court has jurisdiction because the Defendant is a federal official being sued in his official capacity and the suit raises federal questions (e.g., claims arising under the Rehabilitation Act/ADAAA).

2. Prior to this suit, Plaintiff exhausted his administrative remedies. For example, Plaintiff:

   2.1. requested EEO Counseling around June 17, 2016;

   2.2. timely filed an EEO complaint around August 6, 2015;

   2.3. cooperated in the investigation of related matters, under VA EEO complaint file number 2003-0674-2015103941, resulting in the issuance of an EEO Report of Investigation (ROI); and

   2.4. brings this suit within 90 days of receipt of the Final Agency Decision.[2]

III. PARTIES AND SERVICE

3. Defendant ROBERT A. McDONALD is sued in his official capacity as the Secretary of the U.S. Department of Veterans Affairs. (Because this is

---

[1] Assertions in this pleading are made in addition and in the alternative to each other. They are based on the limited amount of information available pre-discovery and so subject to correction and clarification as the case develops.

[2] Two incidents raised post-EEO Report of Investigation, under complaint number 2003-0674-2016104354, will be added once administratively exhausted in February.

an official-capacity suit, Defendant alternatively below may be referred to as "Defendant," "the Secretary," "the VA," or "the Agency.")

3.1. He is being served at VA headquarters.

4. The United States Attorney General and the Civil Process Clerk for the United States Attorney for the Western District of Texas also are being served.

5. Plaintiff Brandon Kirkpatrick resides in the Western District of Texas, Waco Division. He is referred to below as "Plaintiff" or "Kirkpatrick," or both.

IV. VENUE AND OTHER MATTERS

6. Applying 42 U.S.C. § 2002e-5, venue is appropriate in the courts of the Western District of Texas for reasons such as that it is the district in which the employment records relevant to the discriminatory practices are maintained and administered and it is where Plaintiff works.

7. Plaintiff complied with all conditions precedent to bringing this action.

8. Plaintiff mitigated his damages to at least the extent required by law.

V. DISCRIMINATION UNDER THE REHABILITATION ACT/ADA AND EEO REPRISAL

A. Legal Context

9. The Rehabilitation Act, Section 501, 29 U.S.C. § 791 prohibits discrimination by the Federal government against the handicapped.

10. In adopting this section of the law, Congress stated an expectation that the Federal government would be a model employer of the handicapped and would take affirmative action to hire and promote the disabled.

11. Section 504 of the Act, 29 U.S.C. § 794, prohibits exclusion of the handicapped from the benefits of any program or activity conducted by any Executive Agency. The Department of Veterans Affairs is such an Executive Agency.

12. The Rehabilitation Act extends to the Federal government the rules and standards of the Americans with Disabilities Act (ADA).

13. The ADA Amendments Act of 2008 (ADAAA) dramatically broadened the scope of persons protected by disability law, redirecting the focus to whether an employer complied with its obligations and away from extensive analysis of whether the employee's impairment constituted a "disability."

14. The ADA (at 42 U.S.C. § 12203) also prohibits discrimination on the basis of someone’s opposition to violations of the ADA and participation in related proceedings, as well as barring coercion, intimidation, threats, or interference based on a person’s exercise or enjoyment of any right under that law.

VI. ADDITIONAL CLAIMS

15. Plaintiff Brandon Kirkpatrick is a Housekeeping Aide in the Environmental Management Service (EMS) at the VA Medical Center in Waco, Texas. ROI 3.

16. At the time of most of the events at issue, he reported to Housekeeping Supervisor Jackie Hopson and his second-line supervisor was Michael Richardson, Assistant Chief, EMS.

    16.1. Mr. Hopson eventually received what is believed to be a non-disciplinary reassignment to the VA in Temple, Texas, while Mr. Richardson has been promoted to EMS Chief.

    16.2. Plaintiff raises no complaints about his prior supervisor, John Stuart, nor his current supervisor. By contrast, Mr. Richardson continued to harass him as late as May/June 2016.

17. Plaintiff was hired at the VA under Schedule A, and was certified by the Texas Rehabilitation Commission as having a substantial learning disability in an April 8, 2003 letter. ROI 213.

    17.1. Per EEOC, "The Schedule A Hiring Authority for people with disabilities (Schedule A) is an exception to the traditional hiring process. Schedule A streamlines the hiring process for persons with disabilities and, in some instances, hiring officials may select solely from a list of qualified Schedule A applicants."[3]

18. This disability affects the operation of his neurological system and brain, along with such activities as learning, concentrating and thinking.

19. He also has suffered from insomnia and cyclothymia, affecting his neurological system and brain and affecting his ability to concentrate and interact with others. As well, at times his weakened immune system has kept him from working in areas around contagious patients.

20. The fact that Mr. Kirkpatrick was hired under the Schedule A authority for persons with disabilities is apparent from his personnel file, such as a November 30, 2003 SF-50 documenting his eventual conversion to an excepted appointment under the authority of 5 CFR 213.3102(u) ("*Appointment of persons with intellectual disabilities, severe physical disabilities, or psychiatric disabilities*") (emphasis original). ROI 214-215.

21. Mr. Richardson testified, "I didn't even know he had [a disability] until we went to the mediation." ROI 310—aff. at 38:2-4. That mediation to

---

[3] "The ABCs of SCHEDULE A. Tips for Applicants with Disabilities on Getting Federal Jobs," www.eeoc.gov/eeoc/publications/abc_applicants_with_disabilities.cfm.

address disability discrimination claims was July 31, 2015. ROI 529 (agency timeline).

22. In reality, Mr. Kirkpatrick had alerted Mr. Richardson more than two months earlier—in a May 22, 2015 email—that under the "Disability Act" he had "A.D.D. & A.D.H.D. Among Other Things." Kirkpatrick explained he was "Not Using That as A Excuse Its Just Harder For Some One With Things Wrong With Me to Function To Best Of My Ability Around A lot Of People" [*sic*]. ROI 448.

22.1. Mr. Richardson admitted receiving this email, describing it as complaining about harassment by Hopson (ROI 521).

23. Notwithstanding the July 2015 mediation, Mr. Hopson claims he was unaware of Plaintiff's disability and EEO activity until "September, October, November [2015], something like that" (ROI 279—affidavit at 5:1-11).

23.1. Yet the agency timeline in the ROI documents Plaintiff's complaining to Mr. Hopson on "8/4/15" of suffering reprisal.

23.2. As well, an undated but signed statement from Hopson (ROI 528) acknowledges that Hopson was told on "or about 11/12 June 2015" by a union official that Kirkpatrick had complained of harassment by Hopson.

24. Mr. Hopson as late as January 2016 testified to the EEO investigator that "I don't know about any – any disability, ma'am, " adding, "if he has a disability, ain't nobody told me about it. You know, I don't know. I – to me, Brandon look healthy." ROI 290—aff. 48:14-23.

24.1. This is consistent with a stereotype that the only legitimate disabilities are external, physical ones and—in the context of Hopson's mislabeling of Kirkpatrick as a problem employee who frequently left early and otherwise did not do his work—that those with learning disabilities instead are really just stupid or lazy.

25. Similarly to the manner in which Messrs. Hopson and Richardson inaccurately testified as to when they learned Plaintiff was disabled, they falsely portray him as being a problem employee. For example:

25.1. in a June 22, 2015 inspection report from Mr. Hopson, he warned Plaintiff that if "positive improvement is not seen quickly in your overall work ethic your area will not" meet standards (ROI 427); and

25.2. Richardson testified (ROI 305—aff. 9:13-25) that he had received calls about Plaintiff failing to do his work and not cleaning bathrooms.

26. The suggestion that Mr. Kirkpatrick was a lazy, work-avoidant poor performer is contradicted by the testimony of his prior supervisor John Stuart, and of those whose offices Plaintiff cleans:

26.1. Steven Pullin—"Brandon's performance…has been great…He is courteous to staff and our clients" (ROI 58).

26.2. James Christy—"I have not had any problems with his service. He has been prompt when I needed extra help with cleaning" (ROI 59).

26.3. Seth Miller—"He has always been responsive...maintains the building well…always interacted with me in a courteous and respectful manner…I have never complained about Brandon either formally or informally" (ROI 60).

26.4. Christi Harrington—"He is always available to address my office when asked" (ROI 61).

26.5. Christy Rose—"He does an excellent job of keeping my office clean, the hallways clean and the bathroom clean…always willing and dependable to help me with any extra assistance…really the best house cleaner at our building…I see him working hard in the hallways every day" (ROI 62).

26.6. Norma Hill—"…would always go and do what I asked…never had any problems with Brandon…" (ROI 63).

26.7. Aaron Smith—"…has done a wonderful job in serving my office and Employee Health section…friendly personality…has not made any mistakes…I'm very pleased with his work" (ROI 64).

26.8. Michael Ormsby—"…consistent in his duties…always willing to return to my office to clean or collect trash…I have never had a reason to go over his head to report problems or concerns..." (ROI 65).

26.9. Kristina Troublefield—"He's always completed his housekeeping duties in a timely manner…extends professional courtesy to clinical staff and privacy to patients by returning during more convenient times of the day…ensuring his clean procedures will not affect the clinical workflow…never had any problem with his work ethics and I have never submitted a complaint against him" (ROI 66).

26.10. Rita Ramirez—"He is loyal and dependable…In my years in working with Mr. Kirkpatrick I have never had to report him for not doing his duties" (ROI 67).

26.11. Evelyn Trate—"…always been friendly, professional and courteous in all his duties and goes above and beyond to accommodate me when asked…can always rely on Mr. Kirkpatrick to assist me…very conscientious employee; greets employees and

Veterans with kindness and is always willing to assist with wayfinding to visitors" (ROI 68).

26.12. Donnell Donaldson—"…Brandon Kirkpatrick is an excellent house keeper…a very outgoing individual, always happy and smiling greeting the Volunteers and Veterans alike. I sent a message to Mike Richardson about this man being harassed by his supervisor Jackie [Hopson]…I could name a couple of the housekeepers that really need Supervision that work under the same Supervisor as Brandon. This man does his job very well with little to no Supervision" (ROI 70).

26.13. John Stuart, the supervisor prior to Mr. Hopson, testified that when he first began supervising Mr. Kirkpatrick (per ROI 314, December 2011), there were issues, but once Stuart became aware of his "attention disorder" they worked things through and Kirkpatrick "became a very good housekeeper." ROI 315.

26.13.1. Mr. Stuart explained that by the time he left the job supervising Mr. Kirkpatrick (per ROI 314, June 2015), he had no issues with Kirkpatrick, who would do anything he was asked to. ROI 314.

27. Messrs. Hopson and Richardson have no proof of actual poor performance by Mr. Kirkpatrick.

28. Multiple VA staff members observed Mr. Hopson's hostility toward Mr. Kirkpatrick:

28.1. Former first-line supervisor John Stuart testified to an incident in which Hopson claimed to have been to the union office and seen that it had not been cleaned and trash not been picked up for a week. When Mr. Stuart went to the union office to personally check on the situation, he found it had in fact been cleaned and no complaint had been made by the union. Asked if his conclusion was that Hopson's statement had been false, Stuart testified, "right." ROI 316—aff. at 18:17 – 19:10.

28.2. Mr. Stuart testified to another incident in which Hopson called him and claimed he had just seen Plaintiff Kirkpatrick leaving out the gate of the facility, when in fact Kirkpatrick was standing next to Mr. Stuart and speaking to him when the call came in (ROI 314—aff. 13:4-11).

28.3. Mr. Stuart said (*id.*) that on multiple other occasions when Stuart was supervising Mr. Kirkpatrick, Hopson called Stuart to complain—falsely—that Kirkpatrick left early.

28.4. Patricia Vaughn, the Program Support Assistant for the Environmental Management Service, described to the investigator how Hopson "is always tense with Mr. Kirkpatrick," though

Kirkpatrick was always cordial to Hopson. She described Hopson's interactions as not friendly at all, leaning toward being non-professional and usually mildly hostile" (ROI 328).

28.5. In a Report of Contact from June 11, 2015, Ms. Vaughn had recorded how Hopson said he was going to "change Brandon's ways and make him do" what Hopson wanted to be done and that, if not, Hopson would transfer Plaintiff to a patient care area—though Hopson was aware Plaintiff had medical restrictions against that. ROI 182. Ms. Vaughn's testimony to the EEO investigator also references such a conversation (ROI 330 at ¶32).

28.6. The sworn statement from Donnell Donaldson, a VA employee of over 26 years whose job is recruitment of volunteers (ROI 344), characterized Hopson's treatment of Kirkpatrick as a "Hostile Work Environment," explaining that Hopson had questioned Kirkpatrick's work, but no one else's. He testified that Hopson was "singling out Brandon. Because for a long time the other housekeepers on the Building did nothing and got away with it for years." ROI 345.

28.7. 31-year VA employee Norma Hill (ROI 349) described Hopson as "very unprofessional in the way he talks to Brandon." She heard

Hopson "get quite loud" and noticed "he singles Brandon out" (ROI 350).

28.8. Ms. Hill also told the EEO investigator that (*id.*) "I have seen Mr. Hopson walk right by Brandon's co-worker that would be outside smoking when it was not break time and he would not say a word to the co-worker about smoking or not doing his work, but he would come find Brandon to see what he was doing. I have even heard him tell Brandon to help" a particular employee (Larry P.) who in reality spent his time outside smoking rather than getting his own work done.

28.9. Ms. Hill also recounted how Hopson came into her office with a clipboard, asking if she had any complaints on Plaintiff Kirkpatrick and giving her Hopson's phone number to call if she later did. She said in all her years at the VA, she never had a housekeeping supervisor approach her in that manner, and she could not understand why Hopson singled Plaintiff out when the areas for which the other housekeeper (Larry) was responsible were "horrible" with trash "stacked up in closets" and "floors never mopped" (ROI 350).

28.10. Medical Support Assistant Yolanda Espinoza (ROI 355) also testified to being asked by Hopson if her area was cleaned properly, though Plaintiff "is always working and doing a good job by my observations." She said Plaintiff "is a good employee and does his work well" (ROI 355-356).

28.11. Medical Administration Service supervisor Rita Ramirez, a 14.5-year VA employee (ROI 360), told the investigator that Hopson "came on a daily basis, asking if I had complain[t]s or concern[s]," but that she would tell him "no" (ROI 361). By contrast, if Plaintiff were on leave, Hopson would never solicit complaints on the person "covering while he was out" (*id.*).

29. Hopson's rebuttal to the claim that he regularly solicited complaints about Plaintiff was that it was Hopson's practice to go through areas every Monday and prepare a rounding sheet to identify any needs, asking randomly how things were (ROI 283—aff. 20:19 – 21:9). A review of the rounding sheets (ROI 429-442) confirms they are in fact all dated on Mondays.

30. If Hopson were asking only on Mondays and only on a random basis, it is puzzling why staff would report such a frequency of inquiries about Kirkpatrick and on days other than a Monday. For example, Donnell Donaldson testified he was asked by Hopson about Plaintiff's work on June 16, 2015 (ROI 344, ¶13)—which was a Tuesday.

31. Rita Ramirez testified Hopson came by daily to ask about Plaintiff, but never about others (ROI 361, ¶16).

32. As another means of harassment, Hopson repeatedly contacted Plaintiff on his personal cell phone, in spite of Mr. Kirkpatrick's objections that this was unwelcome, that the VA had not provided a government phone for business use, that Plaintiff had to pay phone charges, and that Plaintiff was under direction not to be on his personal phone while at work. *See* November 2, 2015 email to Hopson at ROI 456-457 and September 17, 2015 email at ROI 454-455 requesting no contact via personal cell unless a true emergency.

33. Plaintiff had promised Richardson to give Hopson a chance as his new supervisor (ROI 237—Richardson email of June 8, 2015, 1:53 p.m.), but even before Hopson took over Plaintiff had to email Richardson to alert him about "Jackie [Hopson] Bad Mouthing Me Saying Ima Worthless House Keeper Im lazy & I Don't Do My Job" [*sic*]. Plaintiff explained he was "Beyond Angry Right Now" over what happened (ROI 233). He expressed alarm that the mistreatment of him "is Only Gana Get Worse & Gana Escalate…" [*sic*].

34. The first day Hopson became Plaintiff's supervisor, Plaintiff alerted Richardson to the need for a transfer and the adverse effects Hopson's harassment was having on his wellbeing. In a June 15, 2015 email (ROI

288), Plaintiff pleaded with Richardson that "I Need A Transfer Very Badley" [*sic*]. He set out prior incidents of harassment by Hopson and explained that while the day of the message was the first one he reported to Hopson, "I Really Need To have This Looked over & Fixed I am Beyond Stressed & My Blood Pressure is At a All Time High Today…"

35. Earlier that day, Plaintiff expressed concern to Richardson that "When it Come To Me He [Hopson] Will Be Gunning For Me & Really Only Pushing The Matter With Me Cause He Already Has A Problem With Me & I Just Wanted To Let u Know…" (ROI 229).

36. On June 16, 2015 around 2:10 p.m., Plaintiff saw Richardson in his building and asked why Richardson had not responded to the concerns.

37. Richardson belittled the situation, saying that that "there would not be any problem if they would act like adults" (ROI 164-165).

38. On July 1, 2015, Plaintiff had to see his doctor for "Insomnia secondary to anxiety" (ROI 219-222). He had another visit July 29, 2015 for insomnia and anxiety (ROI 223). On August 19, 2015, his doctor noted him to be "suffering from anxiety and stress related illness" and that he had been seen four times in July and August "due to anxiety and situational stress that is job related" (ROI 224).

39. Plaintiff further explained (ROI 265—aff. 62:24 – 63:3) that while he was still doing his job duties, "with all this going on, it has affected me,

because it's something I take home with me. It stresses me out. And I got to be on all these pills now because of this guy…"

40. Plaintiff was distraught to be given the impression by Richardson that people in Plaintiff's building did not like him and that everyone was complaining about him, in what seemed like an attempt to get him to quit "or run me off" (id. at 63:11-16).

41. In sum, Plaintiff asserts a hostile work environment based on disability (mental) and reprisal because of actions by management such as supervisor Jackie Hopson's falsely telling another supervisor Plaintiff left work early; telling a support staff member that Plaintiff did not do his job and he (Hopson) would fix this when he became Plaintiff's supervisor; falsely telling another supervisor Plaintiff failed to clean the union office; sending another staff member to check on Plaintiff several times a day; falsely telling Plaintiff a complaint was received about his work area; repeatedly soliciting other staff for complaints about Plaintiff; applying different rules to Plaintiff for leave requests/approval; not allowing Plaintiff to work overtime in the manner allowed for other staff; holding Plaintiff to stricter work standards than coworkers such as Larry P., repeatedly contacting Plaintiff on his personal cell phone in spite of Plaintiff's multiple requests to either stop or to provide a VA cell phone; and charging Plaintiff as AWOL rather than advancing him leave.

42. As another example of the hostile work environment, management officials openly discussed Plaintiff's medical restrictions among a group that included persons without a need to know (as documented by John Stuart and Pat Vaughn). As well, Richardson refused to continue to honor Plaintiff's earlier medical documentation about not working in contagious patient areas. Some of Plaintiff's medical documentation disappeared from his file, under circumstances suggesting it was a management official (e.g., Hopson) who accessed and removed it.

43. The VA EEO Office (AKA "ORM") also accepted the AWOL charge of September 14, 2015 and the denial of overtime opportunities of September 22, 2015 as claims independent of hostile environment ones.

44. As to the AWOL charge, a similarly situated employee who was not disabled, or one who had not engaged in EEO activity, would have been permitted to use or be advanced leave for the absence.

45. Second-line supervisor Richardson claimed in a January 20, 2016 statement for the EEO investigator that Complainant Kirkpatrick neither requested nor was "denied any overtime work" (ROI 524). This cannot be aligned with:

    45.1. Plaintiff's testimony that he requested and was denied the ability to work overtime in blocks of less than eight hours (he has a second job he works on weekends and some evenings). ROI 170-aff. at 35.

45.2. Plaintiff's September 14, 2015 email (ROI 209) requesting of Hopson to work overtime in a less-than-eight-hour block.

45.3. Hopson's initial response (ROI 209) of 1:41 p.m. the same day, indicating there was overtime available for Plaintiff to work.

45.4. Hopson's email (ROI 211) of September 17, 2015 at 3:13 p.m., telling Plaintiff "if you want to stay after work on a weekday, then just let me know what day you are available and we can make that happen."

45.5. Hopson's follow-up email (ROI 211) of September 18, 2015, 6:45 a.m., explaining that Richardson had informed Hopson that Richardson "wanted people to work a full 8 hour shift for our overtime because we are in need of extra help."

45.6. The testimony of Patricia Vaughn (Support Assistant reporting to Richardson) that eight-hour blocks of overtime were preferred, but some staff were approved for less (ROI 178).

46. Among the protected EEO activity in which Plaintiff engaged and of which Messrs. Hopson and/or Richardson would have been aware at the time of their actions against Plaintiff were:

46.1. May 22, 2015, 1:12 p.m., email from Plaintiff to Mr. Richardson requesting to remain with current supervisor John Stuart, because of prior harassment from Hopson. The email raises the possibility of disability discrimination

46.2. June 8, 2015, 12:03 p.m. email from Plaintiff to Richardson, complaining of harassment and a hostile work environment and mentioning the possibility of having to file an EEO if things did not improve.

46.3. June 8, 2015, 3:03 p.m. email from Plaintiff to Richardson providing details of improper conduct by Hopson toward him.

46.4. June 11, 2015, 10:46 a.m. email from Plaintiff to Richardson, subject, "Very Urgent," expressing extreme frustration at Hopson's telling others Plaintiff is lazy, etc.

46.5. June 11, 2015, 11:35 a.m. meeting between Plaintiff and Richardson. Richardson told Plaintiff he would be able to help now that he knew there was a problem, provided that a witness came forward. [The witness (Pat Vaughn) submitted a Report of Contact, but Richardson took no corrective action.]

46.6. June 12, 2015, 10:45 a.m., email from Plaintiff to Richardson about false complaint generated by Hopson, alleging retaliation. (No response from Richardson.)

46.7. June 11 or 12, 2015 meeting in union office between Hopson and a union official (Derek) who informed Hopson that Plaintiff was complaining about Hopson harassing him. ROI 528 (Hopson statement).

46.8. June 15, 2015, 8:05 a.m., email from Plaintiff to Richardson about whether there was any follow-up to earlier complaints.

46.9. June 15, 2015, 1:42 p.m., email from Plaintiff to Richardson about being targeted by Hopson at a staff meeting.

46.10. June 15, 2015, 3:09 p.m., email from Plaintiff to Richardson saying he needed a transfer very badly because of harassment and his blood pressure as a result was at an all-time high.

46.11. June 16, 2015 encounter in which Plaintiff asked Richardson why he did not get back to him (Richardson responded there would be no problem if they could all be adults.)

46.12. Multiple occasions on which Plaintiff expressed concern to Mr. Hopson that he was being discriminated against and/or suffering reprisal.

46.13. Initiating EEO Counseling in mid-June 2015.

46.14. Participating in EEO mediation with Messrs. Richardson and Hopson in July 2015.

46.15. Filing a formal EEO complaint around August 6, 2015.

46.16. Participating in development of the ROI (for which Richardson and Hopson also gave statements).

VII. DAMAGES AND RELIEF SOUGHT

47. As a result of the actions of the Defendant, Plaintiff has suffered financial losses and other harms.

48. For example, these events caused him to suffer undue anxiety, insomnia, and mood destabilization, requiring medicine and counseling to handle them.

49. He also was wrongly designated as being AWOL and lost opportunities for overtime work that other employees were granted.

50. He seeks equitable relief, such as a declaration that the Defendant violated the Rehabilitation Act, with an order that the VA regularly report to the Court on efforts to avoid such conduct in the future.

51. He also seeks retroactive voiding of the AWOL and pay for the hours of overtime he would have worked had he been allowed.

52. He further requests an award of compensatory damages for one or more of future pecuniary losses; past and future emotional pain, suffering, inconvenience, mental anguish and loss of enjoyment of life; and other nonpecuniary losses.

53. Beyond that, he seeks an award of reasonable and necessary attorney fees, expenses, and costs under the Rehabilitation Act/ADA/ADAAA and other provisions of civil rights laws. In the unlikely event fees are not

recoverable there, he seeks an award under the Back Pay Act and/or Equal Access to Justice Act.

54. Finally, he requests an award of pre-judgment and post-judgment interest, and any other relief found by the Court to be appropriate.

55. Defendant should be denied relief of any kind.

VIII. JURY REQUEST

56. Plaintiff requests a trial by jury as to all issues not reserved by law for the court.

IX. PRAYER

ON THESE GROUNDS, Plaintiff respectfully asks that he be granted the relief sought and that judgment be entered in his favor and against Defendant.

Respectfully Submitted,

SCHLEICHER LAW FIRM, PLLC
1227 N. Valley Mills Dr., Ste. 208
Waco, TX 76710
(254) 776-3939
(254) 776-4001 fax

By: *_/s/ David R. Schleicher_*
David R. Schleicher
TX Bar No. 17753780
david@gov.law

ATTORNEYS FOR
PLAINTIFF KIRKPATRICK